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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,330	09/10/2004	John S Fisher	1139.26.CN	5329
21901	7590	11/02/2005	EXAMINER	
SMITH & HOPEN PA 15950 BAY VISTA DRIVE SUITE 220 CLEARWATER, FL 33760			DRYDEN, MATTHEW DUTTON	
			ART UNIT	PAPER NUMBER
			3736	
DATE MAILED: 11/02/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/711,330	FISHER ET AL.	
	Examiner	Art Unit	
	Matthew D. Dryden	3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 10 September 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-8 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-8 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 10 September 2004 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

Priority has been claimed back to patent application 10248261, which has a filing date of 12/31/2002.

Information Disclosure Statement

No Information Disclosure Statement was filed with this application.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the plug protruding out of the internal organ must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for

consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

Claims 1-5 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Shaw (5431639).

Regarding claim 1, the device of Shaw is a calibrated device with measurement markings on it, see Figure 1 around element 27. The sealant plug that protrudes out of an internal organ after implantation can be seen as element 94 in Figure 6C, where the organ is the blood vessel 106. There is no visualizing means on the device taught by Shaw.

Regarding claim 2, see rejection of claim 1 above.

Regarding claim 3, the system has measurement markings (element 92, Figure 3) to help position the device for inserting the sealant plug so that a trailing end protrudes out of the surface of the biopsied organ.

Regarding claim 4, the markings as addressed in the rejection of claim 3 are depth measuring marks (Column 15, lines 18-19), and the device used for inserting the plug can be viewed as a needle see Column 18, lines 12-15.

Regarding claim 5, the system is provided with a measuring system that configures the sealant plug blindly to a desired step, and can be seen in Figure 11, also read the description of the contents of Figure 11 in Column 20, lines 1-43.

Regarding claim 8, the trail end of the sealant plug (element 94 in Figure 6C) is protruding beyond the surface of the ruptured internal organ (Figure 6C).

Claim 6 is rejected under 35 U.S.C. 102(b) as being anticipated by Weinstein et al (5370660).

Regarding claim 6, the measuring system of the current device can be viewed as the mesh 22 in Figure 4, which prevents the plug from going any deeper than is desired, there is no imaging means on this device. The device can be used to plug organs, also a blood vessel is a tubular organ, and it protrudes out of the organ, which can be seen around element 22 in Figure 4. Also, there is no imaging means on this device.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schmidt (5928130) in view of Desai (5662680). Schmidt discloses the claimed invention except for the plunger having measuring marks on the plunger. Schmidt teaches an implanting device that has a needle (element 14, Figure 1), a plunger (around element 26, Figure

1), a supporting structure (around element 16 in Figure 1), and a locking means to prevent the plunger from reaching a certain depth(see claim 7) Desai teaches that it is known to provide a plunger with indicator marks (Column 15, lines 19-23) to determine the location and the depth of the device once it is inserted into the body. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device taught by Schmidt with a plunger that had indicating marks on it, as taught by Desai, so that the user could monitor the depth of the sponge upon insertion into the body.

Prior Art

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pat. No. 6,846,320 Ashby et al. discloses a device and method for facilitating hemostasis of a biopsy tract

U.S. Pat. No. 4,850,373 Zatloukal et al. discloses a biopsy device

U.S. Pat. No. 6,863,680 Ashby discloses a system and method for delivering hemostasis promoting material to a blood vessel puncture site by fluid pressure.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew D. Dryden whose telephone number is (571) 272-6266. The examiner can normally be reached on Monday-Friday 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MDD


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